



DALLAS
FORT WORTH
INTERNATIONAL
AIRPORT

**CONTRACT NO. 9500551
JOB ORDER CONTRACT**

**SPECIAL PROVISIONS
PACKAGE 3 OF 5**

REQUEST FOR PROPOSALS

FEBRUARY 7, 2016

CONSTRUCTION CONTRACT
SPECIAL PROVISIONS

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1.0 LIQUIDATED DAMAGES – CONSTRUCTION

- A. If the Contractor fails to achieve substantial completion of any of the work within the time specified in the Delivery Order, including stated milestones, or any extension thereof, the Contractor shall pay the Owner, or the Owner will deduct payments due under this Contract or any other contract with the Owner, as liquidated damages, the sum stated and in increments established in each individual delivery order.
- B. If the Contractor fails to reopen a closed runway, or taxiway according to the schedules provided in the specifications, the Contractor shall pay the OWNER, or the OWNER will deduct payments due under the Contractor any other contract with the OWNER, as liquidated damages, the sum of ONE THOUSAND and 00/100 DOLLARS (\$1,000.00) for each hour of delay, or any part thereof.
- C. The amount of liquidated damages provided in this Contract is neither a penalty nor a forfeiture and represents compensation to Owner for damages that are difficult to calculate at the time this Contract is executed.
- D. The liquidated damages referred to in this article are intended to be and are cumulative and shall be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Contract.

2.0 MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

(UPDATED 04/06/2015)

Notification is hereby given that a MBE Contract specific goal has been established for this Contract. The Contractor/vendor has committed to percent (%) MBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.

A. GENERAL REQUIREMENTS

- 1. It is the policy of the Dallas/Fort Worth International Board of Directors ("Board") to support the growth and development of Minority Business Enterprises ("MBEs") that can successfully compete for Airport construction prime contracting and subcontracting opportunities.
- 2. A "Contractor" is defined as one who participates, through a Contract or any other contractual agreement. For purposes of these Provisions, a Contractor is one who seeks to do business with the Board by submission of a bid or proposal on any such Contract or subcontract. A Contractor includes but is not limited to a Contractor, consultant, developer or vendor.
- 3. It is the policy of the Board to ensure non-discrimination in the award and administration of Board Contracts. Consequently, the Contractor must fully comply with the requirements of the Board's Minority Business Enterprise Program Policies and Administrative Procedures in proposing and performing hereunder.
- 4. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of the Board's Policies. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Board deems appropriate. The Contractor shall insert an Article containing all of the provisions of this Section, including this paragraph, in all subcontracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Board under this Contract.
- 5. The Business Diversity & Development Department ("BDDD") is responsible to ensure

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compliance with the Board's MBE Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for MBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting.

6. The Contractor specifically agrees to comply with all applicable provisions of the Board's Policies and any amendments thereto. MBE and Non-MBE subcontractors also agree to comply with all applicable provisions of the Board's MBE Policy and Administrative Procedures ("Policies").
7. The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
 - a. Subcontract/supplier awards, including awards to MBEs;
 - b. Specific efforts to identify and award such Contracts to MBEs, such as when requested copies of executed Contracts with MBEs to establish actual MBE project participation.

B. ADMINISTRATIVE REQUIREMENTS

1. All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in making a bid and, if awarded a Contract, in performing the work described in the Contract documents. These instructions are intended only to generally assist the Contractor in preparing and submitting a compliant bid. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
2. The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out its MBE contractual commitments.
3. The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to MBEs and Non-MBEs in such form and manner and at such times as the Board shall prescribe.
4. The Contractor shall provide BDDD access to all books, records, accounts and personnel in accordance with the Audit and Records section of these Special Provisions. Such access will be used for, among other purposes, determining MBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract MBE audits. Audit determination(s) regarding Contractor's compliance with the Policies may be considered and have a bearing on consideration of the Contractor for award of future Contracts.

C. GOALS AND GOOD FAITH EFFORTS

1. Each Contractor must comply with the terms and conditions of the Policies in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor's failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
 - a. Responsive; compliance with requirements. If a bid/proposal meets the contract-specific goal or shows an adequate good faith effort in accordance with the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as responsive.
 - b. Non-Responsive; failure to meet requirements. If a bid/proposal subject to a contract-specific goal does not meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as

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non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport.

- i. Informal meeting. If BDDD finds the bid/proposal non-responsive in accordance with the above, the non-responsive bidder/proposer may request an informal meeting with the Vice President or designee within two (2) business days from the date that the Airport notifies the bidder/proposer of the inadequacy of the proposal. Such meeting shall be scheduled by BDDD. All deficiencies in the bid/proposer shall be explained to the bidder or proposer at such meeting after which the bidder/proposer shall be allowed to clarify the original documentation submitted. BDDD will at no time, however, allow additional information, documentation, certification certificates, subcontractors, joint venturers, suppliers, manufacturers, manufacturer's representatives or brokers that may later be added to the contract or to the original participation submitted at the time of the bid or proposal to be counted toward meeting of the project goal. If after this informal meeting the Vice President still finds the bid or proposal to be non-responsive, the Vice President or designee's decision shall stand with no further consideration.
2. Under the Policies, BDDD establishes a contract-specific goal for each Contract. The specific goal for the Contract is stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the Policies, a Contractor must either meet the MBE Contract specific goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the specific goal. If a Contractor does not meet the MBE Contract specific goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made a good faith effort to meet the specific goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.
3. A Contractor cannot require exclusive subcontracting or teaming arrangements or agreements with subcontractors.
4. For Contracts awarded using the procurement methods of Indefinite Delivery, Job-Order-Contract, Construction Management-at-Risk or Design Build, the Vice President of BDDD may determine the requirements to address the Contract goal by means of a Compliance Plan for utilization of MBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
5. In evaluating a Contractor's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
6. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following factors with the bid or proposal. In addition, a Contractor may supplement its responses to include any additional information with the bid or proposal the Contractor believes may be relevant. Failure of the Contractor to demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. The required MBE good faith efforts are set forth below:
 - a. Whether the Contractor attended any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities for MBE participation (acceptable documentation shall include copies of the meeting sign-in sheets with Contractor name noted as signed-in);

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- b. Whether the Contractor advertised in general circulation, trade association, and/or MBE focused media concerning subcontracting and supplier opportunities (acceptable documentation shall be copies of advertisement, newspaper page where advertisement was posted or print media confirmations);
- c. Whether the Contractor provided written notice via email or facsimile to a reasonable number of MBEs and/or contacted a reasonable number of MBEs via telephone about the subcontracting/supplier opportunities. A "reasonable number of MBEs" is based on the number of all MBEs available in the areas of subcontracting or supplier opportunities (acceptable contact modes for solicitation shall be letters, facsimile transmissions, telephone communications and email);
- d. Whether the Contractor solicited the MBEs at least five (5) business days prior to bid submission, exclusive of the day the bids are opened, to allow MBEs to participate effectively. Also, whether the Contractor followed up those initial solicitations of interest by contacting MBEs at least three (3) business days prior to bid opening to determine with certainty whether the MBEs were interested (appropriate steps may be demonstrated by second contact attempts by letter, facsimile transmission, telephone communication or email, if bidder/proposer failed to make contact on its first attempt);
- e. Whether the Contractor selected portions of the work to be performed by MBEs, in order to increase the likelihood of meeting the MBE goal including, where appropriate, breaking down the Contract into economically feasible subcontracts to facilitate MBE participation. This includes portions of the work to be performed by MBEs the Contractor would otherwise prefer to perform with its own workforce. The ability or desire of a Contractor to perform the services of a contract with its own workforce does not relieve the Contractor of the responsibility to meet the contract goal or demonstrate good faith efforts to do so (The bidder/proposer shall make a moderate and reasonable adjustment to the normal and practiced industry standard that demonstrates a reasonable willingness to divide up scopes of work to provide more opportunities for MBEs to bid/quote);
- f. Whether the Contractor provided interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the contract or adequate information about the locations of the plans, specifications, scope of work and requirements of the contract (such access shall be provided at least five (5) business days before bid date or proposal submission);
- g. Whether the Contractor fairly investigated and evaluated the interested MBEs' regarding their capabilities, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation. Also, whether the Contractor provided verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized MBE because the MBE was not qualified. Qualifications must be based on factors other than solely the amount of the MBE's bid. A Contractor may not reject a MBE as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the MBEs' capabilities and expertise. (Appropriate steps may be demonstrated with a summary matrix that identifies all bidders/proposers, evaluation criteria, assessments, conclusions and verifications);
- h. Whether the Contractor negotiated in good faith with interested MBEs, regarding price, using good business judgment and not rejecting reasonable

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quotes from interested MBE. Also, whether the Contractor provided written documentation why the Contractor and each of the MBEs contacted did not succeed in negotiating an agreement (Good faith negotiation shall mean scheduled meaningful discussions that demonstrably seek to find reasonable ways to utilize the MBE on the contract);

- i. Whether the Contractor made efforts to assist interested MBEs in obtaining Board or Contractor-required bonding, lines of credit, insurance, etc.;
 - j. Whether the Contractor made efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
 - k. Whether the Contractor effectively used the services of available minority and women community organizations; chambers and Contractor groups; local, state, and federal business assistance offices, and other organizations that provide assistance in the identification of MBEs (acceptable contact modes for solicitation shall be letters, facsimile transmissions, telephone communications and email, list(s) of MBEs identified, marketing brochure or flyers);
 - l. Whether the Contractor, if applicable, obtained written documentation from the Board's approved Surety Support Consultant or a bona fide surety company indicating that bonding was denied prior to the MBE being rejected as a potential subcontractor for failing to obtain Contractor-required bonding. Documentation furnished by a surety company will be subject to verification by BDDD; and
 - m. Whether other Contractors have attained a sufficient level of MBE participation to meet the Contract specific goal will also be taken into consideration when determining whether the Contractor has made a good faith effort.
7. BDDD will review not only the different kinds of efforts that the Contractor has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of MBE participation sufficient to meet the goal.
8. Whether or not the Contract specific goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Board will only award Contracts to Contractors determined to be responsive and responsible. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the good faith efforts decision. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts to meet the Contract goal and, if not, shall recommend that the Contractor be deemed non-responsive.
9. If a Contractor desires a review of the Vice President of BDDD's decision, it shall file a written request for final reconsideration within five (5) business days after receipt of the decision to the Reconsideration Official:

Executive Vice President
Administration & Diversity
DFW International Airport
P.O. Box 619428
DFW Airport, TX 75261-9428

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As part of the reconsideration, the Contractor will have the opportunity to provide written documentation or argument concerning the issue of good faith.

10. The Contractor has a continuing obligation as a covenant of performance to meet the MBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance must replace a MBE for any reason, it must follow the provisions herein governing the substitution of MBEs and make documented good faith efforts to meet its original MBE contractual commitment.
 - a. Such good faith efforts during Contract performance must include, but are not limited to:
 - i. Solicitation of MBEs that are certified in the applicable area of work or specialty;
 - ii. Providing interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
 - iii. Fairly investigating and evaluating the interested MBEs' regarding their capabilities, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized MBE because the MBE was not qualified. Qualifications must be based on factors other than solely the amount of the MBEs bid;
 - iv. Negotiating in good faith with interested MBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested MBEs and providing written documentation why the Contractor and any of the MBEs contacted did not succeed in negotiating an agreement; and
 - v. Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of MBEs
 - b. A Contractor determined not to have made continuing good faith efforts to meet its MBE contractual commitments may request an administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made continuing good faith efforts in accordance with the Policies. BDDD's determination shall be final.

D. COUNTING MBE PARTICIPATION

1. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the Policies. In determining if a Contractor's committed levels of participation meet or exceed the solicitations or the development agreement's Contract Specific Goal, BDDD shall base its determination solely on the information provided in the bid or proposal document.
2. Unless otherwise specified in the solicitation, all bids or proposals for the provision of Indefinite Delivery or Job-Order-Contracts for a period of time and with no delineation of the dollar amount for specific on-call projects, the Contractor shall submit only the anticipated overall percentage of MBE contractual commitment and post award, submit a completed Compliance Plan for review and approval by the Vice President of BDDD.

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3. If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the MBE will perform with its own workforce; reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.
4. When calculating participation levels, percentages and dollar amounts for each MBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific goal.
5. A MBE must be certified as a MBE by a Board-approved entity and have a place of business in the Airport's market area at the time of bid or proposal submission to be counted towards meeting the Contract Specific goal. Other certifications are not acceptable.
6. Post award, the Contractor may count towards its MBE contractual commitment a MBE that is certified during the performance of the Contract if the MBE is added to the Contract or substituted for a MBE pursuant to section herein.
7. The Contractor may not count toward its MBE contractual commitment the dollar value of work performed by a MBE after it has ceased to be certified.
8. MBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self-perform.
9. When a MBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the MBE toward MBE goals.
10. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate subcontractor, as defined in 49 C.F.R. Part 16.5
11. The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the MBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the MBE for the work of the Contract, including supplies purchased or equipment leased by the MBE (except supplies and equipment the MBE subcontractor purchases or leases from the prime Contractor or its affiliate).
12. The Contractor shall count toward the MBE goals the entire amount of fees or commissions charged by a MBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of an Board Contract, provided it determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
13. When a MBE subcontracts part of the work of its Contract to another firm at any tier, the value of the subcontracted work may be counted towards the MBE goal only if the MBE's subcontractor is itself a MBE. Work that a MBE subcontracts to a non-MBE firm does not count toward MBE goal.
14. The Contractor will count expenditures to a MBE subcontractor toward the MBE goal only if the MBE is performing a commercially useful function on the Contract.
 - a. A MBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where

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applicable) and paying for the materials itself. To determine whether a MBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, the MBE credit claimed for its performance of the work, and other relevant factors.

- b. A MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of MBE participation. In determining whether a MBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which MBEs do not participate.
 - c. If a MBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the MBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, the Contractor must presume that it is not performing a commercially useful function.
 - d. When a MBE is presumed not to be performing a commercially useful function as provided in this section, the MBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
15. The Contractor shall use the following factors in determining whether a MBE trucking company is performing a commercially useful function:
- a. The MBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the MBE goal.
 - b. The MBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 - c. The MBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The MBE may lease trucks from another MBE, including a owner-operator who is certified as a MBE. The MBE who leases trucks from another MBE shall receive credit for the total value of the transportation services the lessee MBE provides on the Contract.
 - e. The MBE may also lease trucks from a non-MBE, including from an owner-operator. The MBE who leases trucks from a non-MBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement. The MBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a MBE.
 - f. For purposes of this paragraph, a lease must indicate that the MBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE, so long as the lease gives the MBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE.

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16. The Contractor shall count expenditures to MBEs for materials or supplies towards the MBE goal as follows:
- a. MBE Manufacturer
 - i. If the materials or supplies are obtained from a MBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies towards the MBE goal.
 - ii. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
 - b. MBE Regular Dealer
 - i. If the materials or supplies are purchased from a MBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies towards the MBE goal.
 - ii. For purposes of this section a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - iii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
17. With respect to materials or supplies purchased from a MBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commission charges for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, towards the MBE goal, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. However, the Contractor shall not count any portion of the cost of the materials and supplies themselves toward MBE goals.
18. If a MBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation toward the MBE goal until the firm is certified. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be MBE certified.
19. The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion.

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20. BDDD will count MBE participation where the MBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the MBE in joint venture. BDDD will allow the joint venture to count the total dollar value of the Contract equal to the distinct, clearly defined scope of the work of the Contract that the MBE joint venture partner performs with its own forces toward the MBE commitment and for which it is at risk.
21. The Contractor shall not count the participation of a MBE subcontractor toward the goal until the amount has been actually paid to the MBE.
22. The following expenditures to MBE firms may also count toward the MBE goal:
 - a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Board to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. The fees charged for delivery of material and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. The fees of commission charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. CERTIFICATION

1. In order to count the participation of MBEs towards the Contract goal, the MBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable. A minority-owned Disadvantaged Business Enterprise (DBE) that is certified by the Texas Unified Certification Program may be counted towards meeting the MBE goal.
2. In addition to having a valid certification from one of the entities listed above, the MBE must have a place of business in the Airport's market area at the time the firm is submitted for credit towards meeting the MBE goal, which is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties. The MBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD.
3. The Contractor must submit to BDDD a properly completed MBE Certification Certificate or letter, with all required attachments, for all MBEs proposed to be utilized as subcontractors or suppliers to meet the Contract goal at the time of bid/proposal submission. The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. A Contractor whose proposed certified firm is rejected for goal credit may request reconsideration of the rejection to BDDD in writing. The request for reconsideration must be received by BDDD within five (5) business days of the notification of rejection. BDDD's decision on the request shall be final.

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4. A firm must be certified as a MBE at the time of bid or proposal submission to be counted towards meeting the goal for purposes of determining Contract award.
5. Post award, a Contractor may count MBEs certified during the performance of the Contract towards its MBE contractual commitment once documentation confirming such certification is submitted to BDDD.
6. BDDD maintains a current listing of certified MBEs. Bidders and proposers must use its Directory to assist them in locating MBEs for the work required on the Contract. The MBE Directory is located at:

<https://dfw.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=dfw&XID=5886>

7. MBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

F. MBE UTILIZATION FORMS AND RELATED DOCUMENTATION

1. Each Contractor must submit for all solicitations, bids or proposals, completed MBE utilization forms as outlined below to be considered responsive.

a. Invitation for Bid (IFB) for Construction Projects:

- **Commitment to MBE Participation** must be submitted at the time of bid submission.
- **Preliminary Schedule of Subcontractors** must be submitted at the time of bid submission.
- **Certification Certificates** Copies of corresponding certification certificates must be attached to the Preliminary Schedule of Subcontractors.
- **Good Faith Effort Documentation** If the Contractor fails to meet the MBE goal, this documentation must be submitted at the time of bid submission.
- **Final Schedule of Subcontractors** shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.
- **Intent to Perform as a Subcontractor** A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.

OR

b. Request for Proposals (RFP) or Request for Qualifications (RFQ):

- **Commitment to MBE Participation** must be submitted at the time of proposal submission.
- **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission
- **Certification Certificates** Copies of corresponding certification certificates must be attached to the Preliminary Schedule of Subcontractors.
- **Good Faith Effort Documentation** If the Contractor fails to meet the MBE goal, this documentation must be submitted at the time of proposal submission.
- **Final Schedule of Subcontractors** shall be submitted with the best and final offer.

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- *Intent to Perform as a Subcontractor* A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted with the best and final offer.

OR

- c. Request for Price Proposal for a task/delivery order under an Indefinite Delivery Contract:
 - *Commitment to MBE Participation* must be submitted at the time of bid/proposal submission.
 - *Compliance Plan*: Post Contract award, submit to BDDD for review and approval.
 - *Final Schedule of Subcontractors*: At the time that a delivery order price proposal is requested, the Final Schedule of Subcontractors must be submitted with the price proposal submission.
 - *Certification Certificates*: Copies of corresponding certification certificates must be attached to the Final Schedule of Subcontractors.
 - *Intent to Perform as a Subcontractor* A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors must be submitted with the final agreed-upon price proposal for each delivery order.
2. Any commitments to meet the MBE goal must be detailed on the *Commitment to MBE Participation* form included with the bid/proposal. This commitment includes the following:

"The Contractor must maintain the MBE participation level to which it committed at Contract award throughout the performance of the Contract. A Contractor may not terminate for convenience a MBE subcontractor (or an approved substitute MBE firm) and then perform the work of the terminated subcontract with its own workforces, those of an affiliate, or any other firm without the prior written consent from BDDD. When a MBE subcontractor is terminated, or fails to complete its work on the Contract for any reason, the Contractor is required to make good faith efforts to substitute another MBE to fulfill its MBE contractual commitment."
3. The *Schedule of Subcontractors* form must list all subcontractors the Contractor intends to use in performing the work of the project, including non-MBEs, and detail the preliminary and/or final percentage and dollar commitment of the Contractor to MBE participation. Only MBEs identified and the levels of participation listed for each at the time of bid submission will be considered in determining whether the Contractor has met the goal. All MBEs must be properly certified under the guidelines of the CERTIFICATION section. Submission of the *Intent to Perform as a Subcontractor* form for each MBE shall constitute a representation by the Contractor to the Board that it believes the MBE to be certified as a MBE to perform the work as designated. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with the MBE for the work described at the approximate price and percentage set forth in the *Intent to Perform as a Subcontractor* form.
4. If the MBE's information or status changes after the form has been submitted but prior to award of the Contract, the Contractor must immediately notify BDDD of the change and a written explanation for the change by submitting a *Request for Approval of Change to Final Schedule of Subcontractors* form. No change in MBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount. The Modification and Substitutions

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section of the Policies shall govern the modifications and substitutions of the MBEs that occur after Contract award.

5. Except as authorized by BDDD, the Contractor shall enter into formal agreements with the MBEs listed on the Final Schedule of Subcontractors and Intent to Perform as a Subcontractor forms within ten (10) business days after receipt of the Contract executed by the Board or Notice to Proceed executed by the Board. If requested, the Contractor must provide the BDDD copies of those agreements within five (5) business days of the written request.
6. Alternative Compliance Plan
 - a. When the project design is not complete or at a level of completeness allowing for final competitive pricing proposals, BDDD's may, in its sole discretion, require bidders or proposers for a construction or construction-related professional services Contract to submit a Compliance Plan in lieu of the above forms. The Compliance Plan shall be developed in accordance with the following requirements:
 - i. BDDD may require separate goals for project professional services and for project construction services, or a project aggregate goal. The Compliance Plan may be required to address the project professional services goal and project the construction goal, only the project construction goal or any project aggregate goal in BDDD's discretion.
 - ii. The construction goal shall be expressed as a percentage of either the total amount of any lump sum construction Contract awarded to complete a project, or in the alternative, the total estimated "cost of the work" as that term is defined in any guaranteed maximum price Contract awarded to complete a project.
 - iii. The Airport department head shall provide a good faith estimate of the construction cost upon which a construction goal shall be set and the bidder or proposer must provide a refined estimate at the time of the submission of a proposed Compliance Plan, if the amount is not reflected in an executed Contract.
 - iv. After consultation with the Department head or a designated representative, BDDD shall establish a timetable for submittal and review of the proposed Compliance Plan.
 - v. At BDDD's sole discretion, it may require submission and review of a proposed Compliance Plan during the solicitation process as a solicitation submittal requirement or after the conclusion of the solicitation process as a component of Contract negotiations and award. Failure to comply with the submittal timetable may, at BDDD's sole discretion, result in no further consideration of the proposed Compliance Plan and rejection of the proposal.
 - b. At a minimum, a proposed Compliance Plan must:
 - i. Comply with the Policies, including affirming that BDDD shall have prompt, full and complete access to all bidder or proposer and subcontractor personnel, books and records required to monitor and assure performance of the approved Compliance Plan and acknowledging the Board's right to withhold payment in the event of non-compliance and subject the Contractor to other sanctions pursuant to the Policies.

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- ii. Provide a detailed program for community outreach and support to enhance MBE opportunities.
 - iii. Provide a detailed program describing how the bidders or proposers will divide up the anticipated work into economically feasible units calculated to enhance MBE opportunities.
 - iv. Describe in detail how the bidders or proposers will make good faith efforts to meet the project goal, including work that the bidders or proposers would normally self-perform, and provide for review, reconciliation milestones and audit opportunities for BDDD.
 - v. If the proposed Compliance Plan is based upon a phased or packaged buy out of the project construction work, the bidders or proposers will describe the process by which the bidders or proposers will address the project goal on a phased/ package or cumulative basis.
 - vi. Describe how the bidders or proposers will comply with the requirements herein as part of the subcontractor buyout of the construction work, including use of commitment forms, Schedule of Subcontractors, Intent to Perform and joint venture forms to adequately document committed participation attained.
 - vii. Contain a specific acknowledgement of the bidder's or proposer's continuing duty to meet the requirements of the Policies. The Compliance Plan must detail how the proposer will make good faith efforts to maintain its MBE commitments.
 - viii. Set forth how the bidders or proposers will comply with BDDD's online reporting system for tabulation of participation performance and plan administration and for monitoring and reporting progress and participation performance to BDDD.
 - ix. Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
 - x. Set forth a detailed methodology for issuance of notice(s) of non-compliance to the bidder's or proposer's subcontractors with the Compliance Plan and a reasonable opportunity to cure.
 - xi. Set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.
- c. BDDD shall approve or initially reject, with comments, the proposed Compliance Plan. If the proposed Compliance Plan is rejected, the bidder or proposer may submit a revised Compliance Plan by a date set by BDDD. BDDD in its sole discretion may meet with the proposer to discuss any deficiencies that must be addressed in the revised Compliance Plan. If BDDD determines the revised Compliance Plan is insufficient to meet the requirements of the Policies, it shall notify the department head in writing of the rejection and the reasons for the rejection. BDDD's determination shall be final and result in no further consideration of the proposal or, in the event a Contract has been awarded, in withdrawal of the award for cause. In no event shall a Contract to construct a project be executed or continue without an approved Compliance Plan.

G. PAYMENT

- 1. It is Board policy that all Contractor invoices submitted to it in compliance with the Contract will be paid by it within 30 days of its receipt.

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2. All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) in paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Board may withhold from any subcontractor its undisputed appropriate share of such payment.
3. No Contractor may withhold retainage from any subcontractor at a higher percentage rate than retainage is withheld by the Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Board from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Board's treatment of retainage withheld/released to Contractor concerning the following subjects:
 - a. the percentage amount of retainage withheld/released;
 - b. the schedule for withholding/releasing retainage;
 - c. the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
 - d. the optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g. optional cessation when 50% of project is substantially complete, with an owner's right to resume withholding retainage upon the occurrence of certain events);
 - e. the release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
4. Each Contractor must address (and implement) in its subcontracts the subject of retainage so that each subcontractor is treated by the Contractor in the same manner as Board treats Contractor. Nothing in this provision precludes a Contractor from including in its subcontracts retainage provisions that are more favorable than those contained in the Contract between Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Board and/or withholding less retainage than Board withholds to cover the value of punch-list work required to be completed before final completion certification.
5. DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
6. Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
7. The Board may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
8. The Board may also exercise any other rights or remedies available to it under this Contract or applicable law if Contractor fails to comply with the payment terms of this

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Contract or applicable law.

9. In an effort to remove the obstacle of the length of time for subcontractor payments on Board procurements, the Board has an Expedited Payment Policy for eligible Contractors that may elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after receipt of the subcontractor's invoice. The Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.
10. To ensure that the Contractor meets all its MBE contractual commitments, BDDD will review the Contractor's MBE utilization throughout the term of the Contract, including any term extensions of the original Contract period. If a Contract includes a MBE contractual commitment, the Contractor must report all MBE payments using the BDDD's online reporting system and submit a *Pay Period Activity Report (PPAR)* (with verifying information) concurrent with the Contractor's submission of payment requests with each invoice. The information reflected on the PPAR will be utilized to provide constant monitoring of the payments made to the MBE as well as non-MBE subcontractors in relation to the percentage of work performed. Failure to include a required PPAR form with the invoice utilizing the Board's online reporting system will result in the invoice being returned to the Contractor.
11. Contract Close Out: To ensure that the Contractor meets all its MBE contractual commitments, BDDD will review the Contractor's MBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment. If a Contract includes a MBE contractual commitment, the Contractor must report all MBE payments using BDDD's online reporting system and submit *Final Pay Period Activity Report* (with verifying information) concurrent with the Contractor's submission of final payment request.
12. BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.

H. MODIFICATIONS OR SUBSTITUTIONS

1. This Section applies to all subcontractor modifications, changes and substitutions under this Contract. The Contractor shall comply with this Section to the extent needed to achieve its MBE contractual commitment stated in its *Commitment to Minority Business Enterprise (MBE) Participation* form.
2. The Contractor understands that if change orders or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.

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3. The Contractor agrees that if change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by a MBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its MBE contractual commitment. If the Contractor is unable to meet its MBE contractual commitment, it must submit a *Request for Approval of Change to Final Schedule of Subcontractors*, must be approved in writing by BDDD.
4. The Contractor cannot terminate or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a MBE subcontractor with its own forces or those of an affiliate, a non-MBE or another MBE.
5. The Contractor must demonstrate good cause to terminate the MBE to the satisfaction of BDDD. Good cause includes the following circumstances:
 - a. The listed MBE subcontractor fails or refuses to execute a written Contract.
 - b. The listed MBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
 - c. The listed MBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
 - d. The listed MBE is ineligible to work on Board projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations.
 - e. BDDD has determined that the listed MBE subcontractor is not a responsible Contractor.
 - f. The listed MBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
 - g. The listed MBE subcontractor is ineligible to receive credit for the type of work required.
 - h. The MBE owner dies or becomes disabled with the result that the listed MBE subcontractor is unable to complete its work on the Contract.
 - i. Other good cause as determined in BDDD's sole discretion,

Good cause does not include where the Contractor seeks to terminate a MBE it relied upon to obtain the Contract so that the Contractor can self-perform the work or substitute another MBE or non-MBE subcontractor to perform the work for which the MBE was engaged or listed on the *Final Schedule of Subcontractors*.
6. The Contractor must give the MBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. The Contractor and the MBE must attempt to negotiate a resolution of the situation, and if the negotiation is unsuccessful, the Contractor must document this effort before the Contractor seeks BDDD's approval to substitute the MBE.
7. Contractors must meet the above criteria and process before requesting prior written approval of any material change in the ownership, control, duties, functions and responsibilities of any MBE. The Contractor cannot make any changes to the *Final*

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Schedule of Subcontractors without the prior written consent of BDDD.

8. If the Contractor proposes to terminate or substitute a MBE subcontractor for any reason, the Contractor must make good faith efforts as defined herein to find a substitute MBE subcontractor for the original MBE to meet its MBE contractual commitment. Its good faith efforts shall be directed at finding another MBE to perform or provide at least the same amount of work, material or service under the Contract as the original MBE to the extent necessary to meet its MBE contractual commitment. The Contractor may also find additional MBEs and/or adjust the current/projected MBE participation to meet its MBE contractual commitment.
9. The Contractor must submit a *Intent to Perform as a Subcontractor* form for each proposed new MBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
10. All changes to the *Schedule of Subcontractors* form must be submitted for review and approval through the *Request for Approval of Change to Final Schedule of Subcontractors* form when adding, changing, or deleting any subcontractor.
11. If the Contractor does not comply with these provisions relating to the modification or termination of, and/or substitution for a MBE subcontractor, the Board may elect to apply Contract remedies as described in the Policies. Additionally, the Board may order the Contractor to forfeit the profits from the terminated portion of the MBE subcontract.

I. COMPLIANCE AND ENFORCEMENT

1. These Compliance and Enforcement Provisions address the additional contractual remedies available to Board as a result of Contractor's failure to comply with the obligations set forth in the MBE Program requirements. The contractual remedies set forth in the MBE Program are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude Board's recovery of its actual damages for such unrelated breaches.
2. The Contractor must forward all necessary documents and information during the course of performance under this Contract and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for MBE participation on the Contract.
3. BDDD is empowered to receive and investigate complaints and allegations by MBEs, third parties or Board Staff, or to initiate its own investigations, regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Board concerning the investigation and Contractor's compliance with the Program requirements.
4. The failure of the Contractor to meet the MBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Board to exercise any remedy available in this Contract, the Program requirements or applicable law.
5. The Board may report any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements to the Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
6. If Contractor is in breach of any of the Program requirements, the Board may exercise

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any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:

- a. withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
- b. temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
- c. termination of the Agreement/Contract;
- d. suspension/debarment, in accordance with applicable law, of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.

7. With respect to MBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

3.0 INSURANCE - WORK ON OWNER INSTALLATION

- A. The contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required herein.
- B. Before commencing work under this Contract, the Contractor shall provide certificates of insurance to the OWNER to show that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the OWNER's interest shall not be effective until ten (10) calendar days after the insurer or the Contractor gives written notice to the OWNER.
- C. The Contractor shall insert the substance of this Section 3.0 in subcontracts under this Contract, that require work on property owned or operated by, or under the control of, the OWNER and shall require subcontractors to provide and maintain the insurance required herein or the Contractor may provide said insurance coverage for the subcontractor(s). At least five (5) calendar days before entry of each such subcontractor's personnel on the installation, the subcontractor(s) shall furnish to the Contractor, a current certificate of insurance meeting the requirements of the Contract. The Contractor shall maintain a file of all such certificates on site and make them readily available for review by the OWNER or its authorized representative.

D. STANDARD INSURANCE SCHEDULE

- 1. Policies: At all times during the term of this Contract or any extension thereof, the Contractor shall procure, pay for, and maintain, with approved insurance carriers, the insurance set forth below, and shall either require all subcontractors and sub-subcontractors performing work for which the same liabilities apply under this Contract to do likewise, or provide for the coverage for subcontractor(s).
 - a. Workers' Compensation: Worker's Compensation of not less than statutory policy limits for each accident. With respect to the services provided under this Contract and during the Contract's term, Contractor shall not opt out of or otherwise fail to maintain such coverage notwithstanding any provision in Texas state law which would allow an employer that option. The workers compensation coverage required hereunder shall in all things comply with the substantive requirements for such coverage contained in Texas state law.
 - i. Texas Department of Insurance Division of Workers Compensation Rule 110.110 requires that all contractors providing services on a building and construction project for a governmental entity such as DFW Airport must:

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- a. Provide verification by insurance certificate that all workers, including workers of subcontractors, are covered under workers' compensation insurance.
 - b. Perform certain reporting duties to the governmental entity (DFW).
 - c. Post notices of coverage at each work site.
 - d. Collect and maintain insurance certificates of all subcontractors.
 - ii. During the term hereof any performance of the work hereunder, Contractor shall comply with TWCC Rule 110.110, as amended from time to time.
- b. Commercial General Liability (CGL):
 - i. Minimum Required Limits:
 - a. \$1,000,000.00 per Occurrence
 - b. \$2,000,000.00 Aggregate
 - ii. Policy coverage must be on an "occurrence" basis using the 1986, or successor, CGL form(s) as approved by the Texas State Board of Insurance.
 - iii. Attachment of Endorsement CG2503, Amendment-Aggregate Limits of Insurance and CG2010, Additional Insured (per project).
 - iv. All other endorsements shall require prior approval by the CM or Owner's Representative.
- c. Comprehensive Automobile Liability:
 - i. Coverage shall be provided for owned, hired, and non-owned vehicles.
 - ii. Minimum Required Limits: \$500,000 combined single limit.
- d. Aircraft Liability:
 - i. Coverage shall be provided for owned, hired, and non-owned aircraft, including Passenger Liability. Aircraft Liability will be required only if the Contractor intends to operate aircraft in connection with this Contract.
 - ii. Minimum Required Limit: \$1,000,000 combined single limit.
- e. Excess/Umbrella Liability
 - i. An Umbrella Liability policy in the amount of \$10,000,000.00 as an excess of the primary coverage required in this Section 3.0, paragraph D., Standard Insurance Schedule shall be maintained by the Contractor at all times during the term of this Contract. Policy coverage must be on an "occurrence" basis.
 - ii. The Contractor may comply with this requirement as follows:
 - a. A "Project Specific" policy which provides coverage for the Airport BOARD et al, Contractor, and Subcontractor(s), or
 - b. A specific policy with the Airport BOARD et al and Subcontractor(s) as additional named insured, or,

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- c. Inclusion of the Airport BOARD et al and all Subcontractors as additional insured under the Contractor's general umbrella liability policy.
 - iii. The Contractor may insert a clause in the subcontract(s) that require Subcontractor(s) performing work under this Contract to provide and maintain an excess/umbrella liability policy commensurate with the risks associated with the subcontract work to be performed. Excess/umbrella liability provided by Subcontractor(s) will be at no additional cost to the OWNER and will not relieve the Contractor from the obligation of providing or causing to be provided, full primary coverage as stated in paragraphs 1) and 2), above. The OWNER will be named as an additional insured on all Subcontractor excess/umbrella liability policies.
- f. All-Risk Builder's Risk Insurance
 - i. Until Beneficial Occupancy of the total premises pursuant to Certificate of Occupancy issued by the OWNER, the Contractor shall maintain an All-Risk Builder's Risk policy in an amount equal to 100% of the insurable value of the work, completed value form including materials delivered and labor performed. This policy shall be written in the name of the OWNER, the Contractor, Subcontractors, and Sub-subcontractors as their interest may appear with an insurer's waiver of subrogation in each of their behalves.
 - ii. Such policy shall also be endorsed so that loss, if any, shall be adjusted with and made payable to the OWNER as Trustee for the insured as their interest may appear. Such Insurance shall be specific as to coverage and not contributing insurance with any permanent insurance as may be in force.
- g. Pollution Liability Insurance
 - i. All work associated with asbestos, lead, mold, (including any work which could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, requires the provision of appropriate Pollution Liability or Environmental Impairment insurance in the amount of \$1,000,000.00.
 - ii. Pollution Liability or Environmental Impairment insurance provided for this contract must not exclude asbestos abatement activities and all risks arising from the removal, transportation and proper disposal of asbestos by the contractor, its employees and subcontractors pursuant to this contract. If the Pollution Liability or Environmental Impairment insurance policy is Claims-Made, the retroactive date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to this contract. The contractor must provide tail coverage or an extended reporting period for a minimum of 12 months following Final Acceptance of the contract.
- 2. Special Conditions: Concerning insurance to be furnished hereunder, it is a condition precedent to acceptability thereof that:
 - a. Any policy submitted shall not be subject to limitations, conditions, or restrictions inconsistent with the intent of the Insurance Requirements to be fulfilled by Contractor; the OWNER's decision thereon shall be final.

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- b. Unless noted herein, all policies are to be written through a licensed company duly authorized by the Texas State Board of Insurance to transact that class of insurance in the State of Texas. The company rating shall be listed on the Certificate of Insurance as listed in the A.M. Best Key Rating Guide and be rated a minimum of A- and be of acceptable financial size. Surplus lines carriers will also be approved.
 - c. Approval, disapproval, or failure to act by the OWNER regarding any insurance supplied hereunder shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth herein. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.
 - d. No special payment, except when a line item is provided, shall be made by the OWNER for any insurance that may be required hereunder.
 - e. Airport BOARD (OWNER), et al, shall be included as an additional insured on the following policies. "Airport BOARD (OWNER), et al," means the BOARD of Directors of the DFW International Airport, the Cities of Dallas and Fort Worth, Texas and their respective officers, directors, agents, employees, and designated and/or authorized representatives. Designated authorized representatives shall be so designated in writing with specific limits of authority, and may be members of the BOARD (OWNER) Staff or employees of firms under contract with the BOARD (OWNER) to provide specific services.
 - i. Commercial General Liability Policy
 - ii. Comprehensive Auto/Truck Policy
 - iii. Excess/Umbrella Liability Policy
 - iv. Aircraft Liability Policy
 - v. Pollution Liability
 - vi. Other policies as may be deemed appropriate by the OWNER's Risk Management Department.
 - f. The insurance companies issuing the policy or policies required hereunder shall have no recourse against the OWNER for payment of any premiums or for assessments under any form of policy.
 - g. In the event that the statutory limit on tort claims liability generally applicable to the OWNER is increased as a result of any action taken by any governmental body, regulatory agency or court, the now increased tort claims exposure shall automatically become the minimum requirement for liability insurance provided herein, if higher than the primary liability limits specified in D(1)(b) above.
 - h. Should this contract require the use of subcontractors, it will be the sole responsibility of the Contractor to verify that such subcontractors are in compliance with the insurance provisions of this Contract or that OWNER has provided coverage for a subcontractor. It will be the sole responsibility of the Contractor to provide to the OWNER subcontractor's certificates of insurance (if requested). The OWNER reserves the right to reject and/or remove any subcontractor who cannot demonstrate proof of the insurance coverage required hereunder.
3. Any of such insurance policies may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

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4. Proof of Insurance
 - a. When requested by the OWNER, copies of any Policies must be furnished to the OWNER, otherwise, the OWNER shall require Certificates only.
 - b. Certificates indicating Contractor coverage to be in force shall be filed with the OWNER prior to execution of the Contract and shall provide for a minimum of ten (10) calendar days prior written notice of cancellation to be given the OWNER. Copies of subcontractor certificates indicating coverage in force shall be maintained on site by the Contractor.
 - c. Evidence of renewal of coverage shall be delivered to the OWNER at least ten (10) days prior to expiration of any particular policy.
 - d. All certificates shall be issued on the Acord Form or OWNER's Certificate of Insurance form. No substitutions shall be accepted without prior written authorization from OWNER, which authorization shall be discretionary.
 - e. ALL CERTIFICATES OF INSURANCE SHALL INCLUDE THE DFW PROJECT NAME, DFW CONTRACT NUMBER, OWNER CONTACT PERSON AND SHALL INCLUDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF A RESIDENT AGENT TO WHOM ANY REQUISITE NOTICE MAY BE DELIVERED.
5. Texas Department of Insurance Division of Workers Compensation Rule 110.100 defines the Contractor's responsibilities as follows:
 - a. Definitions:
 - i. Certificate of Coverage ("Certificate"): A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - ii. Duration of the Project: Includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the OWNER.
 - iii. Persons Providing Services on the Project ("subcontractor" in §406.096): Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless or whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of and such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
 - b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Contractor providing services on the project, for the duration of the project.

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- c. The Contractor must provide a certificate of coverage to the OWNER prior to execution of the contract.
- d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended.
- e. The Contractor shall obtain from each person providing services on a project, and provide to the OWNER:
 - i. A certificate of coverage, prior to that person beginning work on the project, so the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - ii. No later than seven (7) calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Contractor shall notify the OWNER in writing by certified mail or personal delivery, within ten (10) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - i. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirement of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
 - ii. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - iii. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - iv. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage,

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prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- v. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - vi. Notify the OWNER in writing by certified mail or personal delivery, within ten (10) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - vii. Contractually require each person with whom it contracts, to perform as required by a) - g), with the certificates of coverage to be provided to the person for whom they are providing services.
- j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the OWNER that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and all coverage agreements will be filed with the appropriate insurance carrier or, in the case of self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the OWNER to declare the contract void if the Contractor does not remedy the breach within ten (10) calendar days after receipt of notice of breach from the OWNER.
6. Waiver of Subrogation: Insurers shall have no right of recovery or subrogation against the Airport BOARD et al, it being the intention of the parties that insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or the Airport Board has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Airport Board, et al for all work performed by the Contractor, its employees, agents and subcontractors.
7. Changes to Insurance: Insurance requirements may be changed by the OWNER during the term of this Contract due to changes in the law, changes in OWNER policy, or increased risk due to the nature of the work being performed.

4.0 INSPECTION OF CONSTRUCTION

- A. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the OWNER. The OWNER shall have the right to witness all tests performed by the Contractor. Tests performed by the Contractor are all tests to ensure compliance with the Contract over and above the testing performed by the OWNER. The OWNER shall have the right to approve all tests including approval of test procedures and test conditions to assure compliance with the Contract.
- B. The Work shall be conducted under the general observation of the OWNER and is subject to inspection and test by the OWNER at all places and at all reasonable times before Final

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Acceptance to ensure strict compliance with the Contract. Inspections and tests by the OWNER are for the sole benefit of the OWNER and do not:

1. Relieve the Contractor of responsibility for providing adequate quality control measures;
 2. Relieve the Contractor of responsibility for damage to or loss of any material before acceptance;
 3. Constitute or imply acceptance; or
 4. Affect the continuing rights of the OWNER after acceptance of the completed Work.
- C. The presence or absence of an Authorized Representative of the OWNER does not relieve the Contractor from any Contract requirement, nor may any Contract requirements be changed without the OWNER's written authorization.
- D. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the OWNER. The OWNER's authorized Materials Testing and Inspection Laboratory will charge to the Contractor and Contractor agrees to pay any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The OWNER will perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Specifications. The OWNER will perform all tests described and identified in the Specifications except those specifically identified to be performed by the Contractor.

5.0 DIFFERING SITE CONDITIONS

- A. The Contractor shall promptly, and before the conditions are disturbed, give written notice to the OWNER of (1) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. ("Materially" is defined as conditions causing costs not covered under unit price adjustments in excess of \$10,000.00.)
- B. The OWNER or authorized representative shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, an equitable adjustment shall be made under this Article and the Contract modified in writing accordingly.
- C. No request by the Contractor for an equitable adjustment to the Contract under this Article shall be allowed unless the Contractor has given the written notice required; provided that the time prescribed in paragraph (a) for giving written notice may be extended by the OWNER.
- D. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under the Contract.

6.0 WARRANTY OF CONSTRUCTION

- A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in Paragraph D. of this Article, that the Work conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- B. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

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1. Obtain all warranties that would be given in normal commercial practice;
 2. Require all warranties to be executed, in writing, for the benefit of the OWNER, if directed by the OWNER; and
 3. Enforce all warranties for the benefit of the OWNER, if directed by the OWNER.
- C. In the event the Contractor's warranty under paragraph A. of this Article and 7.A. below has expired, the OWNER may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- D. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the OWNER or for the repair of any damage that results from any defect in material or designs furnished by the OWNER.
- E. This Article shall not limit the OWNER's other rights under the Contract.

7.0 SUPERINTENDENCE BY CONTRACTOR

- A. The Work is located on a major operational airport. The OWNER considers the safety and unrestricted flow of the traveling public, as well as other users of the Airport, to be of the utmost importance, and therefore, to be an essential part of the Contract. Material and equipment shall be stored and the Work shall be performed with as little obstruction to pedestrian and vehicle movement as possible. Sidewalks and other areas where pedestrians move about shall remain open and usable except as designated in the Contract.
- B. At all times during performance of this Contract and until the Work is completed and accepted, the Contractor shall have on the Site a competent representative who has full authority to act for the Contractor at all times when work or services are being performed. All work under this Contract shall be performed in a skillful and workmanlike manner. The OWNER may require, in writing, that the Contractor remove from the Site any employee whose behavior the OWNER deems inconsistent with the requirements of paragraph A. above, incompetent, careless, or otherwise objectionable.
- C. Public safety and convenience requirements as described in the Contract shall be the direct responsibility of the Contractor. The Contractor shall be responsible for taking proper safety and health precautions to protect the Work, the workers, the public, and the property of others.
- D. For projects less than \$5 million, the Contractor may, at his option, establish an office at the Work site. For projects of \$5 million or more, the Contractor is required to establish an office at the Work site to conduct his day-to-day operations unless otherwise directed by the Engineer. As a minimum, the project manager, secretary and project/office engineer are to be located on site. Operations to be conducted on site are to include but not be limited to change order preparation and negotiation, shop drawing processing, schedule preparation and monitoring, preparation of and receipt of Project correspondence. The project manager will be assigned to the Project full time for the entire duration of the Contract. A listing of emergency telephone numbers for all key Contractor personnel shall be provided to the OWNER.

8.0 CONTRACTOR'S WORK FORCE

- A. Unless otherwise required by the Contract or the bidding documents, the Contractor shall, within seventy-two (72) hours after bid opening, provide to the OWNER in writing the name and location of the place of business of each proposed major subcontractor, as determined by the OWNER including those who will furnish materials or fabricated equipment. This list of major subcontractors is generally limited to first tier subcontractors and suppliers.
- B. The Contractor shall not, without the written consent of the OWNER, either substitute any subcontractor in place of the subcontractor designated in the list provided under paragraph A., or permit any subcontract to be assigned or transferred or allow any subcontract to be

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performed by anyone other than the subcontractor designated in paragraph A.

- C. The OWNER may reject any subcontractors which the OWNER considers unacceptable for the work. If a subcontractor is rejected, an acceptable replacement subcontractor will be provided at no additional cost to the OWNER.
- D. The value of the Work performed by the Contractor with its own employees shall not be less than twenty percent (20%) of the Contract Amount.

9.0 SUBMITTALS

- A. Submittals shall include Shop Drawings, Product Data and Samples as defined below:
 - 1. Shop Drawings: Drawings submitted to the OWNER by the Contractor, pursuant to the Contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, illustrations, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. The OWNER may duplicate, use, and disclose in any manner and for any purpose Shop Drawings delivered under this Contract.
 - 2. Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
 - 3. Samples: Physical examples which illustrate materials, equipment and workmanship and establish standards by which the Work will be judged.
- B. Contractor shall coordinate all such submittals and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Submissions to the OWNER without evidence of the Contractor approval may be returned for resubmission. If required by the Specifications, the submittal shall bear the stamp and signature of a licensed professional engineer or architect. Submissions shall be made in a timely manner and in an orderly sequence so as to cause no delay to the Work.
- C. The OWNER will review and approve or take other appropriate action upon Contractor's submittals, but only for conformance with the design concept of the Work and with the information given in the Contract. The OWNER's review or approval of a specific item shall not indicate approval of an assembly of which the item is a component. The OWNER will indicate an approval or disapproval of the submittal and, if not approved as submitted, will indicate the OWNER's reasons therefore.
- D. Approval by the OWNER shall not relieve the Contractor from responsibility for any errors of omissions in such drawings or from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with E. below. No Shop Drawing, Product Data or Sample shall be issued for construction without the OWNER's Review Stamp affixed thereto. Any work done before OWNER approval shall be at the Contractor's risk.
- E. If any initial submittal or resubmittal shows variations from the brand name specified, the Contractor shall describe such variations in writing on a separate transmittal letter at the time of submission.
- F. Contractor shall keep adequate records of submittals and approvals so that an accurate up-to date record file is maintained in his field office at all times.
- G. When certificates of compliance are provided for brand name items specified, a submittal will not be required.

10.0 MATERIAL AND WORKMANSHIP

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- A. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.

11.0 CONSTRUCTION RECORDS/DRAWINGS

- A. The Contractor shall keep a complete and accurate record of all changes or deviations from the Contract documents. This record set of prints of the Contract drawings, shop drawings, and Specifications shall be kept on Site. The OWNER or its Authorized Representative shall at all times have access to review record drawings for completeness and accuracy.
- B. The OWNER may withhold twenty-five percent (25%) of progress payments or other amounts deemed appropriate by the OWNER if the Contractor fails to comply with the requirements of this Section.
- C. The Contractor shall provide to the OWNER in electronic format as prescribed by the DFW CADD Standards, one (1) complete draft record set of as-built Contract documents. The Contractor shall provide to the OWNER one (1) complete set of record documents of Contract Drawings, and one (1) updated set of Specifications modified to reflect all changes made by Addenda, Contract Change Order, and Field Modifications, on or before the date of Substantial Completion of the Work. The OWNER or Authorized Representative shall review the changes for completeness within fifteen (15) calendar days of receipt. The Contractor shall then produce a final record set of as-built Contract documents, in electronic format as prescribed by the DFW CADD standards, within fifteen (15) calendar days of receipt of comments from the OWNER or Authorized Representative on which the Contractor shall certify the completeness and accuracy of the Construction Record Drawings and Shop Drawings by endorsing each drawing sheet with the following statement:

“To the best of (Insert name of Contractor)’s belief and knowledge the as-built conditions shown on this drawing constitute an accurate and complete depiction of the manner in which this portion of the Work was actually installed during performance of Contract No. _____.

(Insert name of Contractor)

(Signature of Contractor’s representative and date)

- D. Prior to application for Final Payment, the Contractor shall deliver certified as-built Specifications and Contract and Shop Drawings to the OWNER. The as-built set shall be arranged according to the Contract drawing and Specification numbering system used in the Contract documents. The Contractor shall provide an index and cross-referenced listing of each drawing sheet in the as-built set.
- E. For a period of four years from the date of Final Acceptance, the Contractor shall be fully responsible for the accuracy and completeness of construction record drawings and shall bear all costs of damages incurred by the OWNER of any nature whatsoever due to inaccuracies or incompleteness of said as-built records, except to the extent that conditions are disturbed by subsequent construction.

12.0 NOTICE OF LABOR DISPUTES

- A. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information to the OWNER.
- B. The Contractor agrees to insert the substance of this Article, including this paragraph (B), in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of

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all relevant information concerning the dispute.

13.0 INTEREST OF PUBLIC OFFICIALS

- A. The Contractor represents and warrants that no employee, official, or member of the OWNER is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the OWNER with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this Article, the OWNER shall have the right to annul this Contract without liability and/or have recourse to any other remedy it may have at law.

14.0 GOVERNING LAW

- A. The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to this Contract, then federal common law, including the law developed by federal board contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie in Dallas County, Texas, or Tarrant County, Texas. This is the complete agreement between the parties. If any provision is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

15.0 LIMITATION OF OBLIGATION

- A. Upon execution of the Contract for the Work, one hundred percent (100%) of the Contract Sum will be made available for payment and allotted to the Contract. Changes in the Contract amount may be made only by written Change Order, approved and executed by the OWNER and the Contractor.
- B. No claims for further compensation or extensions of time, whether for delay, overhead, profit, fees, acceleration, force majeure, disruption, impact, or any other reason whatsoever, shall be made by the Contractor as a result of the change contained in such Change Order, as payments and extensions of time specified thereunder shall constitute payment in full for the Work as altered therein; and OWNER shall never be obligated in any event to pay or reimburse Contractor in excess of the Contract amount as revised by such approved Change Order.
- C. The terms and provisions of this Article entitled "Limitation of Obligation" shall control where in conflict with any other terms or provisions of the Contract, however, nothing in this Article shall be construed to deny the OWNER's unilateral right to suspend or terminate work under the applicable provisions of the Contract.

16.0 OBLIGATION TO PERFORM FUNCTIONS

- A. Any failure or neglect on the part of OWNER to enforce provisions herein dealing with supervision, control, inspection, testing, or acceptance and approval of the Work shall never operate to relieve Contractor from full compliance with the Contract nor render OWNER liable to Contractor for money damages, extensions of time or increased compensation of any kind.

17.0 ACCEPTANCE OF OTHER CONTRACTOR'S WORK

- A. If any part of the Work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect the other contractor's work and promptly report in writing to the OWNER the results of said inspection prior to proceeding. The Contractor's failure to inspect and/or to report any defects shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work, except as to defects which may develop in the other contractor's work after the execution of the Work.

18.0 AUDIT; RECORDS AND INSPECTION RIGHTS

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A. Maintenance.

1. Contractor (and Contractor's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must maintain, and Board will have the right to examine books, records, and documents including, but not limited to, Subcontracts, joint venture agreements, general ledgers, job Costs records, purchasing records, bank statements, cancelled checks, payroll records, project records and any other supporting evidence deemed necessary by Board to substantiate compliance with the terms of the Agreement Documents or any Job Order, including, but not limited to, Costs and charges of whatever nature related to, incurred and/or anticipated to be incurred in the performance of the Agreement Documents.
2. Such right of examination will include inspection at all reasonable times of Contractor's office or facilities or such parts thereof as may be engaged in the performance of the Agreement Documents or any Job Order, and cooperation by Contractor Personnel (including, but not limited to, cooperation in obtaining records from Contractor's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves), as reasonably considered necessary by Board's representatives to complete the audit.

B. Examination.

1. Scope. Board will have the right to examine all books, records, documents, and other data of Contractor related to the negotiation, pricing, or performance of the Agreement Documents, including, but not limited to, Change Orders, Job Orders, Modifications, Amendments or similar documents, for the purpose of evaluating the accuracy, completeness and currentness of the Costs or pricing data submitted or retained in connection with providing Work. The right of examination will extend to all records necessary to permit adequate evaluation of the Costs or pricing data submitted along with the computations and projections used therein. Proprietary/Trade Secret information may not be withheld from Board.
2. Format; Costs; Availability.
 - a. Contractor's (and Contractor's Subconsultants'/Subcontractors', suppliers', vendors', insurance agents', and other agents' and any Persons' acting for or on any of their behalves) documents, records and other evidence will be subject to inspection and/or reproduction by Board. Contractor, (and Contractor's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide Board with retrievals, in the format(s), including, but not limited to, the file format(s), specified by Board, of computer based records or transactions that Board determines to be necessary to conduct the audit.
 - b. There will be no charge to Board for reasonable use of photocopy machines while conducting the audit, or for any Costs of retrieving, downloading, and/or printing and delivering to Board any records or transactions stored in magnetic, optical, microfilm, or other media.
 - c. Contractor, (and Contractor's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide all records and retrievals requested within 7 Days.
 - d. Board may also request, and Contractor agrees to provide, on a monthly basis, categories of records subject to Board's right to audit for review by Board.

C. Retention.

1. General. All records required to be produced/made available under this Clause must be made available at any office of Contractor where they are located at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment. Contractor must provide adequate and appropriate workspace to conduct all audits, inspections and reviews. If requested by Board, computer-based

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retrievals and copies of selected documents and records must be delivered to Board. Board will provide Contractor with reasonable advance notice of intended audits, inspections and reviews.

2. Termination. If this Agreement is completely or partially terminated, the records relating to the Work terminated must be made available for a period of 3 years from the date of final payment.
3. Litigation/Claims. Records which relate to litigation or settlement of claims arising out of the performance of this Agreement must be made available for a period of 3 years from the date of final disposition of such litigation or claims.
- D. Pass-Down. Contractor must insert an Article containing all the provisions of this Clause, including this paragraph, in all Subcontracts, except altered as necessary for the proper identification of the contracting Persons. If requested by Board, Contractor must submit copies to Board of all Subcontracts and changes to Subcontracts pertaining to this Agreement. Failure to submit such written Subcontracts or to insert this Article in all Subcontracts will be reason to exclude some or the entire related payee's compensable Costs from the amounts payable to Contractor pursuant to the Agreement Documents.
- E. Audit; Overcharges. If an audit or review, in accordance with this Article, discloses overcharges (of any nature) by Contractor in excess of \$100,000, the Cost of Board's audit will be reimbursed by Contractor (in addition to the amount overcharged). The amount of Board's audit reimbursement will not exceed the value of the overcharges. Any adjustments and/or payments which must be made as a result of any such audit or review shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Board's findings to Contractor.

19.0 PUBLICITY RELEASES

- A. All publicity releases or other published information in any way concerning this Contract or the Work hereunder, which the Contractor or any of its subcontractors desires to make, shall be subject to approval by the OWNER prior to release.

20.0 OWNER'S RIGHT OF TRANSFER

- A. The BOARD and the Cities of Dallas and Fort Worth, reserve the right to transfer their interests herein to any other governmental body set up to, or authorized by law to operate the Airport.

21.0 COMPOSITION OF CONTRACTOR

- A. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

22.0 ACCIDENT PREVENTION

- A. The Contractor is totally responsible for the development and implementation of an on-site safety program. The Contractor's safety program is to be submitted to the Construction Manager for approval within seven (7) calendar days after Notice to Proceed (NTP).
- B. In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions.

23.0 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

- A. The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor form OSHA-174), as prescribed in Federal Standard No. 1910-1200, for all hazardous material five (5) calendar days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under the Contract which will involve exposure to hazardous materials or items containing these materials.
- B. "Hazardous Material," as used in this clause, is as defined in Federal Standard No. 313A, in

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effect on the date of this contract.

- C. Neither the requirements of this clause nor any act or failure to act by the OWNER shall relieve the Contractor of any responsibility or liability for the safety of OWNER, Tenant, Contractor, or subcontractor personnel or property.
- D. The Contractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- E. The OWNER'S rights in data furnished under the Contract with respect to hazardous material are as follows:
 - 1. To use, duplicate, and disclose any data to which this clause is applicable. The purpose of this right is to
 - a. Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - b. Obtain medical treatment for those affected by the material; and
 - c. Have others use, duplicate, and disclose the data for the OWNER for these purposes.
 - 2. To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph E.1. above, in precedence over any other clause of the Contract providing for rights in data.
 - 3. That the OWNER is not precluded from using similar or identical data acquired from other sources.
 - 4. That the data shall not be duplicated, disclosed, or released outside the OWNER, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:

"This is furnished under D-FW International Airport BOARD Contract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of _____."

This legend shall be marked on any reproductions of this data."

(End of legend)

- 5. That the Contractor shall not place the legend or any other restrictive legend on any data which the Contractor or any subcontractor previously delivered to the OWNER without limitations.
- F. The Contractor shall insert this clause, including this paragraph F., with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under the Contract involving hazardous material.

24.0 SEVERABILITY

- A. If a provision of the Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of the Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to the Contract in the event any provision hereof is declared illegal, invalid or unenforceable.

25.0 PROTECTION AGAINST LIENS AND ENCUMBRANCES

- A. In order to prevent a lien, attachment or other encumbrance from being placed on the property

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of the OWNER, Contractor agrees to furnish during the progress of any Work hereunder, as requested from time to time, verified statements showing Contractor's total outstanding indebtedness in connection with the Work. If Contractor shall allow any indebtedness to accrue to subcontractors or others and shall fail to pay same within ten (10) calendar days after demand, then the OWNER may withhold any money due Contractor until such indebtedness is paid or apply same toward the discharge thereof.

- B. If the amount of such withheld payment or other monies due Contractor under the Agreement is insufficient to meet such costs, or if any claim against Contractor is discharged by the OWNER after final payment is made, Contractor and its surety or sureties, if any, shall promptly pay the OWNER all costs incurred thereby regardless of when such claim arose or whether such claim imposed a lien upon the Project or the real property upon which the Project is situated.
- C. In the event a lien is filed, Contractor shall remove the lien, or see that it is removed or shall furnish a bond for the full amount thereof within seven (7) calendar days of notice by the OWNER. Failure to comply with the foregoing requirements shall constitute grounds for termination of the Agreement.
- D. Notwithstanding the above, Contractor shall not at any time suffer or permit any lien, attachment or other encumbrance, whether under any laws of any state or otherwise, by any person or persons whomsoever or by reason of any claim or demand against Contractor, to be placed or remain on the property of the OWNER, including but not limited to the Work Site or other premises upon which Work is being performed and materials being furnished hereunder.
- E. The suffering or permitting of any lien, attachment or other encumbrance, whether valid or invalid, by Contractor on the property of The OWNER shall preclude, until same is removed, any and all claims or demands for payment to Contractor under this Agreement. Additionally, if any such encumbrance is not removed immediately by Contractor, the OWNER may pay such claim or demand and remove such encumbrance and may deduct the amount so paid, together with all expenses arising therefrom including attorney's fees, from any further payment to Contractor, or at the OWNER election, Contractor shall, upon demand, reimburse the OWNER for the amount paid and all expenses incurred in connection therewith. Any such payment made in good faith by the OWNER shall be binding upon Contractor.

26.0 TITLE AND RIGHT

- A. No provision in the Contract shall be construed as vesting Contractor with any right of property in materials used after they have been attached to or incorporated into the Work, nor materials, for which Contractor has received full or partial payment. All such materials, upon being so attached, incorporated or paid for, shall become the property of the OWNER. Any gravel, sand, stone, minerals, timber and all other materials excavated, uncovered, developed or obtained in the Work, or on any land belonging to the OWNER shall remain solely the property of the OWNER. Subject to prior written approval from the OWNER and mutual agreement on a proper credit against the price, Contractor will be permitted to use, in the performance of the Work, any such materials that meet the requirements of the Contract. Any objects excavated or exposed that may have historical significance shall be brought to the attention of the OWNER.

27.0 NON-WAIVER OF RIGHTS

- A. Waiver by either party of any breach of the Contract, or the failure of either party to enforce any of the provisions of the Contract, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

28.0 SURVIVAL

- A. Neither completion of any work, nor any termination or cancellation of the Contract, shall be deemed to relieve either party of any obligations, relating to the Contract, that by their nature survive completion of the Work, including, but not limited to, all warranties and obligations of

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indemnity and insurance.

29.0 BINDING ON SUCCESSORS AND ASSIGNS

- A. This Contract shall inure to the benefit of and be binding upon the undersigned parties and entities, and their respective legal representative, successors, and assigns.

30.0 DISCOVERY OF CONFLICTS, DISCREPANCIES, ERRORS OR OMISSIONS

- A. In case of conflict or discrepancies, errors or omissions among the various Contract documents, the matter shall be submitted immediately by Contractor to the Construction Manager for decision, and such decision shall be final. Any Work affected by such conflicts, discrepancies, errors or omissions which is performed prior to the Construction Manager determination shall be performed at the Contractor's risk.

31.0 INDEMNIFICATION AND HOLD HARMLESS

- A. THE CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITIES OF DALLAS AND FORT WORTH, THE DFW AIRPORT BOARD, AND ALL THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES, HEREIN REFERRED TO AS "INDEMNITIES" FROM AND/OR AGAINST ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES AND EXPENSES, DIRECT, OR INDIRECT OR CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND COURT AND ARBITRATION COSTS) OF ANY CHARACTER, NAME, AND DESCRIPTION BROUGHT FOR OR RESULTING FROM ANY INJURIES OR DAMAGES (INCLUDING BUT NOT RESTRICTED TO DEATH) RECEIVED OR SUSTAINED BY ANY PERSONS OR PROPERTY RESULTING FROM , ARISING OUT OF, OR IN CONNECTION WITH:
1. THE OPERATIONS OF THE CONTRACTOR, ITS SUBCONTRACTORS, OR SUBCONTRACTORS THEREUNDER; OR
 2. ANY NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF CONTRACTOR OR ITS SUBCONTRACTORS OR THEIR AGENTS OR EMPLOYEES IN THE EXECUTION OF THE CONTRACT; OR
 3. THE FAILURE OF THE CONTRACTOR TO PROVIDE NECESSARY BARRICADES, WARNING LIGHTS, OR SIGNS; OR
 4. ANY NEGLIGENCE OF THE CONTRACTOR TO SAFEGUARD THE WORK; OR
 5. THE USE OF MATERIAL NOT CONFORMING TO THE CONTRACT REQUIREMENTS OR OTHERWISE UNACCEPTABLE OR DEFECTIVE; OR
 6. ANY VIOLATION OF LAW, ORDINANCE, REGULATION, OR ORDER OF ANY PUBLIC AUTHORITY HAVING JURISDICTION OVER THE WORK.
- B. CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE INDEMNITEES GROWING OUT OF SUCH INJURY, AND/OR DAMAGE. IN ADDITION, THE CONTRACTOR AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER AND ALL INDEPENDENT CONTRACTORS FROM ANY WRONGS, INJURIES, DEMANDS, OR SUITS FOR DAMAGES EITHER REAL OR ASSERTED, CLAIMED AGAINST THEM, THAT MAY BE OCCASIONED BY ANY ACT, OMISSION, NEGLIGENCE, OR MISCONDUCT OF THE SAID CONTRACTOR OF ITS SUBCONTRACTORS AND THEIR AGENTS, SERVANTS, OR EMPLOYEES.
- C. Except for claims for bodily injury or death of an employee of Contractor, its agents, or its subcontractors of any tier, in the event of joint and concurrent negligence or fault of the Contractor and one or more of its subcontractors or consultants, on the one hand, and one or more of the indemnitees, on the other hand, defense and indemnity, if any, shall be apportioned comparatively in accordance with applicable law.

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32.0 TERMINATION FOR CONVENIENCE

- A. The OWNER may, whenever the interests of the OWNER so require, terminate the Contract, in whole or in part, for convenience of the OWNER. The OWNER shall give written notice of the termination to the Contractor specifying the extent of termination and effective date of termination.
1. The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. With approval or ratification of the OWNER, the Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The OWNER may direct the Contractor to assign the Contractor's right, title, and interest under the terminated orders or subcontracts to the OWNER. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
 2. The OWNER may require the Contractor to transfer title and deliver to the OWNER in the manner and to the extent directed by the OWNER: (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the OWNER. The Contractor shall, upon direction of the OWNER, protect and preserve property in the possession of the Contractor in which the OWNER has an interest. If the OWNER does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the OWNER, credited to the price or cost of the Work, or paid in any manner directed by the OWNER.
 3. After termination, the Contractor may submit a final termination settlement proposal to the OWNER in the form and with the certification prescribed by the OWNER. The Contractor shall submit the proposal promptly, but no later than 60 Days from the effective date of termination, unless extended in writing by the OWNER upon written request of the Contractor. If the Contractor fails to submit the proposal within the time allowed, the OWNER may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
 4. Subject to paragraph "3" above, the Contractor and the OWNER may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph "4", or paragraph "5" below, exclusive of costs shown in subparagraph "5" "b." below, may not exceed the total Contract Price as reduced by 1. the amount of payments previously made and 2. the Contract Price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount.
 5. If the parties are unable to agree on the amount of a termination settlement, the OWNER shall pay the Contractor the following amounts:
 - a. For Work performed before the effective date of termination, the total (with duplication of any items) of:
 - i. the cost of this work;
 - ii. the cost of settling and paying termination settlement proposals under

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terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph 1), above; and

- iii. a sum, as profit on i), above, determined by the OWNER to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the OWNER shall allow no profit under this subparagraph iii), and shall reduce the settlement to reflect the indicated rate of loss.

b. The reasonable costs of settlement of the work terminated, including:

- i. the termination and settlement of subcontracts (excluding the amounts of such settlements); and
- ii. storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

33.0 MANDATORY FEDERAL AGREEMENT PROVISIONS

During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

A. General Civil Rights:

- 1. The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.
- 2. This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- 3. This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.
- 4. In these cases the provision obligates the party or any transferee for the longer of the following periods:
 - a. the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the airport sponsor or any transferee retains ownership or possession of the property.

B. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

C. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

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- D. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Consultant of Consultant's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- E. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Consultant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- F. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
1. Withholding payments to Consultant under the contract until Consultant complies; and/or
 2. Cancelling, terminating, or suspending a contract, in whole or in part.
- G. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Consultant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Consultant may request the United States to enter into the litigation to protect the interests of the United States.
- H. Non-Discrimination Statutes: During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended,

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(prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

34.0 RENEWALS.

- A. Option. Board has the option to renew this Agreement for 3 successive 1 year periods.
- B. Exercise of Option. Board will first give Contractor written notice of its intent to seek legislative authorization to exercise a renewal at least 60 Days prior to the expiration of the initial or any subsequent term of this Agreement. A renewal will be effective upon Board's issuance to Contractor of a second written notice advising it of the renewal after Board has legislatively approved such renewal, without the need execute any additional documentation evidencing the renewal.
- C. Contractor Automatically Bound. Contractor agrees that it will be bound by the terms of the Agreement Documents for the subsequent exercised renewal term.

35.0 LIMITATION ON AUTHORITY.

- A. Governmental Entity. Contractor acknowledges and agrees that Board is a governmental entity under Texas law and is required to follow certain statutory procedures under certain circumstances in:
 - 1. modifying the Contract or any Job Order;
 - 2. modifying the Work or any Job Order;
 - 3. increasing or decreasing compensation payable pursuant to the Contract or any Job Order; or
 - 4. otherwise altering the terms of the transaction embodied within the Contract or any

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Job Order.

- B. Limited Authority. Accordingly, Board Authorized Representative (as well as any other individuals acting on behalf of Board) may not be authorized to effectuate certain modifications to the Contract and any Job Order absent Board's enactment of legislation authorizing them to do so and Contractor is deemed to understand all legal limitations on those individuals in acting under the Contract and any Job Order and representing Board's interests in administering them.

36.0 APPLICABLE LAWS

- A. Compliance with Applicable Laws. Contractor will perform the Work and conduct its activities under the Contract in compliance with all Applicable Laws.
- B. Standard of Care: Contractor represents that it has the knowledge, ability, skills and resources to provide such Work in accordance with the terms of the Contract and any Job Order. Contractor agrees to use its best efforts, skill, judgment and abilities to perform the Work in an expeditious and timely manner as is consistent with the orderly progress of any Job Order Project authorized pursuant to the Contract.

37.0 ATTORNEY'S FEES

- A. Recovery.
 - 1. Litigation Costs. In any litigation filed by either Party against the other arising out of a dispute under or relating to this Agreement, the prevailing Party in the litigation, at trial and on appeal, will be entitled to recover its reasonable and necessary Attorneys'/Paralegals' fees and litigation Costs (collectively, "Litigation Costs") incurred by it, as fixed by the Court in accordance with this Clause. The use of the term "Court" in this Clause refers to determinations concerning legal fees reserved to the judge and, in the case of a jury trial, to the jury, in accordance with Applicable Laws.
 - 2. In-House and Outside Counsel/Paralegals.
 - a. Recoverability. Litigation Costs recoverable by any Party include Litigation Costs incurred by any In-House Counsel/Paralegals and/or Outside Counsel/Paralegals it uses.
 - b. In-House. If a Party is represented by In-House Counsel, the attorneys' fees component of such Litigation Costs will be calculated by creating an hourly billing rate for each attorney based upon the following formula: Annual Salary/Allocated Annual Hours (2,080 Hours) = Hourly Billing Rate. Litigation Costs attributable to each attorney will be calculated using the computed hourly billing rate times the number of hours worked by such attorney on the litigation. This same formula will be used for calculating the paralegals' fees component of such Litigation Costs for In-House Counsel.
 - c. Outside Counsel. If a Party uses Outside Counsel/Paralegals for the litigation, such Litigation Costs will be calculated at the billing rates of the firm's attorneys/paralegals participating in the litigation, times the number of hours worked by such participating attorneys/paralegals.
 - d. Dual Recovery. A Party may recover Litigation Costs associated with In-House Counsel/Paralegals and Outside Counsel/Paralegals in accordance with this Clause even if both types of counsel are used in any particular litigation.
- B. Prevailing Party.
 - 1. Condition to Recovery. To qualify as a prevailing Party, a Party must obtain some relief on the merits of a claim or defense asserted by it against the other Party in the form of

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an enforceable judgment.

2. Defendant May be a Prevailing Party. The Parties acknowledge and agree that, in certain circumstances, a Party that is a defendant in litigation filed by the other Party, that acts in a purely defensive manner and that does not assert a counterclaim against the Party plaintiff may be a prevailing Party in the litigation that is entitled to an award of Litigation Costs by the Court.
3. Multiple Prevailing Parties. The Parties acknowledge and agree that, in certain circumstances, both may be considered prevailing Parties in any litigation brought between them concerning this Agreement, particularly if both bring claims against the other in the form of original claims by the plaintiff Party and counterclaims by the defendant Party or if 1 Party asserts numerous claims against the other and some or all of those claims are successfully defended against.

C. Nature of Claims.

1. Equitable Claims. If the claim asserted by the prevailing Party involves equitable relief, the Court will determine an amount of Litigation Costs to be awarded that are equitable and just in light of the particular equitable relief sought and obtained.
2. Legal Claims. If the claim asserted by the prevailing Party is legal in nature and results in an award to the Party of monetary damages, the Court will determine an amount of Litigation Costs to be awarded that are equitable and just in light of the total monetary damages sought by the prevailing Party, the total Litigation Costs incurred by it in pursuing such monetary damages and the proportional relationship between the monetary damages actually awarded and the total Litigation Costs incurred. Awarded Litigation Costs must bear some reasonable relationship to the amount of monetary damages awarded.
3. Allocation between Equitable and Legal Claims. If a Party requests both equitable and legal relief and seeks the recovery of Litigation Costs for both types of relief, it must reasonably allocate its Litigation Costs between the equitable and legal relief sought so that the Court may appropriately apply this Clause and Applicable Laws in determining the amount of any Litigation Costs to be awarded to the prevailing Party.

- D. Court Guidelines. It is the Parties' intent that this provision for the award of Litigation Costs will not be inflexibly enforced by the Court and that the ultimate form of judgment rendered in the case is not necessarily controlling, but must give way to equitable considerations. The Court must compare the relief awarded on the claims and defenses asserted in the litigation with the Parties' demands on those same claims and defenses and their litigation objectives, as disclosed by the pleadings, trial briefs, opening statements and similar sources. The prevailing Party determination, including instances where there are multiple prevailing Parties, and the resulting award of Litigation Costs, should be made only upon final resolution of the claims and defenses asserted in the litigation and only by a comparison of the extent to which each Party has succeeded in its contentions.

38.0 REVISIONS TO GENERAL PROVISIONS

- A. Delete General Provisions, Section 20-9, BID GUARANTEE.
- B. Replace General Provisions, Section 30-5, REQUIREMENTS OF CONTRACT BONDS, with the following:

30-5 REQUIREMENTS OF CONTRACT BONDS. Within 10 calendar days after notice of award, the successful bidder shall furnish the Owner a surety bond or bonds which have been fully executed by the bidder and the surety guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the Contractor's performance of the work. The surety and the form of the bond or bonds

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shall be acceptable to the Owner. The surety bond or bonds shall be in a sum of \$3,500,000.00.

No sureties will be accepted by the OWNER who are now in default or delinquent on any bonds or who are actively interested in any litigation against the Cities or the OWNER. All bonds shall be made on forms furnished by the OWNER, and shall be executed by not less than one corporate surety admitted to do business in the State of Texas or be listed by the U.S. Department of the Treasury as an acceptable surety. Individual sureties will not be accepted. Each bond shall be executed by the Contractor and the surety. Each surety shall designate an agent resident in Dallas or Tarrant County, Texas, to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. If a change in Resident Agent occurs, this change must be reported to the Airport Development & Engineering Department immediately.

Surety bonds shall be in accordance with applicable law. These bonds shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract Amount, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract Amount decrease such obligation.

- a. Performance Bonds are required on all contracts which exceed \$100,000.00 - A good and sufficient bond in the amount of \$3,500,000.00, as evidenced by the proposal tabulation, or otherwise, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with the Contract, including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of acceptance of the improvement by the OWNER.
- b. Payment Bonds are required on all contracts which exceed \$50,000.00 - A good and sufficient bond in the amount of \$3,500,000.00, as evidenced by the proposed tabulation, or otherwise, guaranteeing the full and proper protection of all claimants supplying labor and material in the prosecution of the Work provided for in said Contract and for the use of each such claimant.
- c. Should the aggregate amount of outstanding issued work exceed \$3,500,000.00, the contractor will be required to provide payment and performance bonds in the full amount of all outstanding work.

C. Add Section 70-21 to the General Provisions as follows:

70-21 PARKING AND ACCESS AUTHORITY. When required by the Work, and upon request, access to the applicable Parking Revenue Areas will be granted at no cost to the Contractor.

END OF SPECIAL PROVISIONS